

SB 666 (STEINBERG)

Empowering Immigrants to Exercise Rights Under the Law Without Fear of Retaliation

SUMMARY

SB 666 empowers immigrant workers to exercise their rights under California law without fear of employer retaliation. The bill empowers immigrant workers to speak up against labor abuses in the judicial process, agency proceedings, and before the legislature. The bill deters unscrupulous businesses and attorneys from using an employee's immigration status or that of their family to prevent an employee from exercising his or her rights. This bill makes it clear that threatening to report or reporting a worker or their family member to a government agency, including immigration authorities, because that worker attempts to exercise a right under the law is an adverse action (retaliation) for purposes of establishing the violation of the employee's right.

BACKGROUND

There are about 11 million undocumented immigrants in the United States. California is home to an estimated 2.6 million undocumented immigrants. As Congress and the President are on the cusp of agreeing to immigration reform that provides California's hardworking immigrants with a path to citizenship, the legislature must act to protect our workers from exploitation.

Unscrupulous employers have utilized nefarious tactics to stop workers from exercising their rights under California law. There are countless examples of immigrant workers attempting to exercise their employment rights only to have their employer threaten to report them or actually

report them or their family members to immigration or law enforcement under false charges.¹

Unscrupulous lawyers representing these law-breakers have also used these immigration related threats to keep people from testifying or showing up to depositions in support of workers trying to enforce their rights.

An employer or attorney's threat to alert immigration or law enforcement of an undocumented immigrant or their family is an enormous force against justice. It silences the worker and the entire workplace. And, it gives a law-breaking business strong incentive to run a shop that falls far short of respecting California's employment laws. Law-abiding businesses are forced to compete with these law-breakers whose costs are lowered by engaging in illegal activities like wage theft and shortcuts in safety.

California law is clear that all employees are entitled to the protections available under law regardless of the person's immigration status. For example, undocumented workers are entitled to: a workplace that is free from sexual harassment; a workplace free from unsafe and unhealthy working conditions; be paid for the hours they work; and be paid minimum wage. However, our current state statutory scheme does little to deter a law-breaking boss or business from using the immigration status of the worker, co-worker, or family member to create an atmosphere of fear to prevent workers from

¹ See, e.g. <http://www.nelp.org/page/-/Justice/2013/Workers-Rights-on-ICE-Retaliation-Report-California.pdf?nocdn=1>

demanding their rights in the workplace. Our state statutes do not deter an unscrupulous employer from retaliating against a worker by calling immigration authorities when that worker demands that the employer comply with California's labor laws.

THIS BILL

This bill empowers workers to exercise their rights under California law without fear that employers will retaliate by reporting their immigration status or that of their family members to government officials. The bill's provisions will deter unscrupulous employers from violating the rights of immigrant workers laboring in California and therefore lift the veil of silence in the workplace.

Prohibits immigration related retaliation against an employee or their family for exercising their legal rights. This bill adds a provision to the Labor Code to clarify that it is an adverse action to report or threaten to report an employee or their family's citizenship or immigration status to authorities because the employee exercises a right under the Labor, Government, or Civil Code. As an example, an employee is entitled to be free from retaliation for bringing forth a claim of sexual harassment, regardless of that employee's immigration status. Under this bill, if a worker complains of sexual harassment and the employer threatens to call immigration on the worker or their family member because of the complaint, the threat constitutes an adverse action for purposes of proving that the boss retaliated.²

Clarifies existing labor law that prohibits threats or acts of retaliation. This bill

amends section 98.6 of the Labor Code, making it clear that employers may not retaliate or take adverse action against employees exercising employment rights. It also clarifies that an employer cannot retaliate or take adverse action against an employee who makes a written or oral complaint that they are owed unpaid wages. And, it adds a civil penalty of up to \$10,000 for violations under 98.6. The \$10,000 penalty is the stick that will prevent unscrupulous employers from retaliating against undocumented workers who attempt to exercise their rights under California law.

Penalize law-breaking employers that leverage an employee's immigration or citizenship status to their benefit. This bill adds a provision to the Business and Professions Code to subject businesses to suspension or revocation of their license if they retaliate against an employee based on citizenship or immigration status because the employee exercises a right related to employment.

Disciplines attorneys who use immigration status to intimidate. This bill adds a provision to the Business and Professions Code to subject an attorney to discipline for reporting or threatening to report the immigration status of a witness or party to a civil or administrative action or their family to authorities because they exercise a right related to their employment.

Clarifies that the Labor Code does not require exhaustion of administrative remedies or procedures, unless expressly stated in the statute. The employee's path from being the subject of illegal employment practices to court redress must be clear. This bill adds a provision to the Labor Code to clarify that an individual does not have to exhaust administrative remedies or procedures to bring a civil action under the Labor Code unless the code section expressly requires exhaustion. Where the legislature has

² An "adverse action" is an element of proving retaliation.

provided the necessary steps before filing a lawsuit, employers and employees know what is expected. In the absence of legislative guidance, courts are creating rules which are based on a case-by-case review, often inconsistent, unclear, and ill-defined. As a result, employers and employees are uncertain about whether the employee must exhaust administrative remedies. This bill provides certainty regarding what path the victim of illegal employment practices must take to seek redress.

Extends existing whistle blower protections to include testifying before the legislature or any public body. This bill amends Labor Code Section 1102.5 to make it clear that the whistle blower protections protect workers from employers and anyone acting on behalf of the employer. And, it makes it clear that an employer may not retaliate against an employee for testifying before the legislature, where the employee believes they are disclosing a violation of state or federal statutes or regulations.

SUPPORT

California Labor Federation (Sponsor)
California Rural Legal Assistance
Foundation
Central American Resource Center
Worksafe

OPPOSITION

None

FOR MORE INFORMATION

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